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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

JOE EUGENE SKIPPER,
Petitioner

vs

BENNETT H. BRUMMER, ET AL.,
Respondent

CASE NO. 79-5499

PETITION FOR WRIT OF CERTIORARI

Petitioner Joe Eugene Skipper applies for a writ of certiorari and in support of his petition shows:

OPINION AND ORDERS BELOW

Petitioner seeks certiorari from the judgment of the United States District Court, Southern District of Florida, dismissing a 1983 Civil Rights Complaint on May 25, 1978 (Exhibit "A"), rehearing denied on October 3, 1978, case no. 78-396, (Exhibit "B") and the judgment of the United States Court of Appeals affirming the lower court on July 6, 1979, (Exhibit "C"), rehearing denied on September 21, 1979, case no. 78-3567. (Exhibit "D").

JURISDICTION

The jurisdiction of the United States District Court is founded on 42 U.S.C. 1983 and the jurisdiction of the United States Court of Appeals is founded on 28 U.S.C. 1291. The jurisdiction of the United States Supreme Court is founded on 28 U.S.C. 1254 and 42 U.S.C. 1984.

QUESTIONS PRESENTED

Petitioner presents the following questions for the Court's consideration:

1. ARE PUBLIC DEFENDERS ACTING UNDER THE COLOR OF LAW FOR PURPOSES OF 42 U.S.C. 1983 CIVIL RIGHTS ACTIONS?

2. ARE PUBLIC DEFENDERS ENTITLED TO ABSOLUTE IMMUNITY?

CONSTITUTIONAL PROVISIONS

The constitutional provisions involved in this petition are the 5th, 6th, and 14th Amendments to the Constitution of the United States. (Exhibit "E")

STATEMENT OF THE CASE

On or about October 9, 1976 Petitioner was arrested and charged with carrying a concealed firearm.

Subsequently, Petitioner was found to be indigent and Bennett H. Brummer, Public Defender of the Eleventh Judicial Circuit, Dade County, Florida was assigned counsel for the defense.

On the day of trial, immediately prior to trial, Counsel Davis Cohen, an assistant public defender assigned to the case, told Petitioner that he had been held in contempt by Judge Williams who would be hearing the case and his assistant, Lenny, would present the defense.

Petitioner proceeded to jury trial, was found guilty, and on March 4, 1977 was sentenced to 4 years in prison.

In January, 1978 Petitioner had Mrs. Sandra Spear Thomas call the public defender's office and inquire if there was a "Lenny" working there.

Mrs. Thomas called and was told that the only Lenny working there was Leonard Cooperman, a legal intern.

Petitioner later received a copy of his certified state court record which shows that he was represented by "Leonard Cooperman, Certified Legal Intern." (Exhibit "F").

Petitioner has never consented to be represented by a legal intern.

Petitioner filed a 1983 Civil Rights Action that he had been deprived of his Sixth Amendment right to counsel.

The United States District Court dismissed the complaint on the grounds that public defenders have absolute immunity.

Petitioner appealed and the United States Court of Appeals, Fifth Circuit, affirmed the decision on the grounds that acts of court appointed counsel are not state action.

Petitioner seeks certiorari to review those decisions.

ARGUMENT

1. ARE PUBLIC DEFENDERS ACTING UNDER THE COLOR OF LAW FOR PURPOSES OF 42 U.S.C. 1983 CIVIL RIGHTS ACTIONS?

Petitioner filed a 1983 civil rights action in which he alleged that he had been deprived of his Sixth Amendment Right to counsel by Public Defender Bennett H. Brummer, Assistant Public Defender Davis Cohen, and Legal Intern Leonard Cooperman.

The United States District Court dismissed the complaint holding that public defenders have absolute immunity.

The Court of Appeals affirmed the lower court's decision, "but for the reason that in this Circuit the actions of court-appointed attorneys are not state action."

This is in direct conflict with the Seventh Circuit's holding in Robinson v. Bergstrom, 579 F.2d 401 (1978). (Exhibit "G").

As further reason for this Court to grant certiorari Petitioner is presenting and making a part of this petition a copy of Harvard Law Review, Volume 92, pages 943 to 951. (Exhibit "H").

It is respectfully submitted that the decision of the Fifth Circuit Court of Appeals is in direct conflict with the Seventh Circuit and the question presents an important federal issue which should be decided by this court.

2. ARE PUBLIC DEFENDERS ENTITLED TO ABSOLUTE IMMUNITY?

Petitioner contends that this is an important federal question which has never been presented to the United States Supreme Court and one which the Court should answer.

Petitioner again adopts and makes a part hereof the Harvard Law Review, Volume 92, pages 943 to 951 (Exhibit "H") as reason for this Court to grant certiorari.

CONCLUSION

It is respectfully submitted that the writ of certiorari should issue.

Respectfully submitted,

Joe Eugene Skipper

VERIFICATION

I, Joe Eugene Skipper, do hereby swear that all statements in the foregoing petition for writ of certiorari are true and correct to the best of my knowledge and belief.

Joe Eugene Skipper
JOE EUGENE SKIPPER
BOX 1100-761
AVON PARK, FLORIDA 33825

SUBSCRIBED AND SWORN TO BEFORE ME THIS 8TH DAY OF OCTOBER, 1979.

John B Rittenhouse
NOTARY PUBLIC
Notary Public, State of Florida at Large
My Commission Expires Feb. 19, ...
Bonded By American Fire & Casualty Company

CERTIFICATE OF SERVICE

I, Joe Eugene Skipper, do hereby certify that a true and correct copy of the foregoing petition for writ of certiorari and exhibits has been furnished to;

BRIAN E. NORTON
ASSISTANT ATTORNEY GENERAL
THE CAPITOL-SUITE 1501
TALLAHASSEE, FLORIDA 32304

by United States Mail this 8 day of October, 1979.

Joe Eugene Skipper
JOE EUGENE SKIPPER
BOX 1100-761
AVON PARK, FLORIDA 33825

EXHIBIT "A"

EXHIBIT "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 78-396-Civ-JLK

JOE EUGENE SKIPPER,

Plaintiff,

-vs-

BENNETT H. BRUMMER, DAVIS COHEN, and LENNIE COOPERMAN,

Defendants.

FINAL JUDGMENT

Upon review of the recommendation of the United States Magistrate Herbert S. Shapiro, and upon independent review of the entire record herein, it is thereupon

ORDERED AND ADJUDGED that this complaint is hereby DISMISSED for failure to state a cause of action under 42 U.S.C. §1983.

DONE AND ORDERED at Miami, Florida, this 25 day of MAY, 1978.

James Lawrence King
UNITED STATES DISTRICT JUDGE

c.c.: Joe Eugene Skipper
Bennett H. Brummer
Davis Cohen
Lennie Cooperman
Office of the Attorney General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 78-396-Civ-JLK

JOE EUGENE SKIPPER,

Plaintiff,

-vs-

BENNETT H. BRUMMER, DAVIS COHEN, and LENNIE COOPERMAN,

Defendants.

REPORT AND RECOMMENDATION

JOE EUGENE SKIPPER has filed a complaint pursuant to the Civil Rights Act, 42 U.S.C. §1983, requesting monetary relief from Defendants for alleged violations of his civil rights. Specifically, Plaintiff contends that he was represented in his criminal defense by a legal intern from the Dade County Public Defender's office, which inherently denied Plaintiff the effective assistance of counsel.

The Honorable James Lawrence King, United States District Judge has referred this cause to the undersigned for preliminary review and recommendation.

The Court recognizes that pro se complaints must be liberally construed, Haines v. Kerner, 404 U.S. 519 (1972), but where the allegations are clearly frivolous a pro se complaint may summarily be dismissed. 28 U.S.C. 1915; Watson v. Ault, 525 F.2d 886 (5th Cir. 1976); Jones v Bales, 58 F.R.D. 453 (N.D.Ga. 1972).

This complaint must obviously fail since public defenders are immune from liability under §1983, as stated by the Seventh Circuit in John v Hort, 489 F.2d 786, 789 (1973):

> "The legislative history of 42 U.S.C. §1983 does not indicate that Congress intended to 'abolish wholesale all common law immunities'. Pierson v. Ray, 386 U.S. 547, 555, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1966). In part because of the same factors which lead us to think that state subsidized and appointed public defenders can act under color of state law, we conclude that public defenders, like state prosecutors, and state and city attorneys, enjoy a qualified immunity for acts performed in the discharge of their official duties. Brown v. Joseph, 463 F.2d 1046, 1048 (3rd Cir., 1972), cert. denied, 412 U.S. 950, 93 S.Ct. 3015, 37 L.Ed.2d 1003. See Arensman v. Brown, 430 F.2d 190, 193 (7th Cir., 1970). We note that the extension of immunity to public defenders will encourage their free exercise of discretion in the performance of professional obligations, as well as an aid in the recruitment of able men and women for public defender positions. See Brown v. Joseph, supra, 463 F.2d at 1048-1049.

Therefore, it is the recommendation of the undersigned that the instant complaint should be dismissed for failure to state a cause of action under 42 U.S.C. §1983.

DATED at Miami, Florida, this 22 day of MAY, 1978.

Herbert S. Shapiro

HERBERT S. SHAPIRO
UNITED STATES MAGISTRATE

c.c.: Joe Eugene Skipper
Avon Park Correctional Institution
P.O. Box 1100
Avon Park, Florida

Bennett H. Brummer; Davis Cohen, Lennie Cooperman
Office of the Public Defender
1351 N.W. 12th Street
Miami, Florida

Office of the Attorney General
Department of Legal Affairs
Civil Division
Suite 1501
The Capitol
Tallahassee, Florida 32304

EXHIBIT "B"

EXHIBIT "B"

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 78-396-CIV-JLK

JOE EUGENE SKIPPER,
Plaintiff,
v.
BENNETT H. BRUMMER, et al,
Defendants.

ORDER DENYING MOTION FOR REHEARING

This matter arose upon the motion of the plaintiff for a rehearing of the order of this court which dismissed the complaint for failure to state a cause of action. After carefully reviewing the record, the court does

ORDER AND ADJUDGE that the motion is denied. See Robinson v. Bergstrom, 579 F.2d 401 (7th Cir. 1978); Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978).

DONE AND ORDERED in chambers in Miami, Florida, this 3 day of October, 1978.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: Joe Eugene Skipper
Bennett H. Brummer, Esq.
Davis Cohen, Esq.
Leonard Cooperman, Esq.
Office of the Attorney General

EXHIBIT "C"

Joe Eugene SKIPPER,
Plaintiff-Appellant,

v.

Bennett R. BRUMMER, Davis Cohen, and Lennie Cooperman,
Defendants-Appellees.

No. 78-3567
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

July 6, 1979.

A civil rights damages suit was filed against three public defender lawyers who allegedly denied plaintiff effective assistance of counsel by allowing him to proceed to trial without counsel. The United States District Court for the Southern District of Florida, at Miami, James Lawrence King, J., entered judgment for defendants on the ground that public defenders are immune from liability under the Civil Rights Act of 1871, and plaintiff appealed. The Court of Appeals held that actions of court-appointed attorneys are not state action for purposes of the civil rights statute creating a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another.

Affirmed.

Civil Rights ⇐13.5(5)

Actions of court-appointed attorneys are not state action for purposes of civil rights statute creating a federal cause of action against persons whose misconduct under color of state law violates the constitutional rights of another. 42 U.S.C.A. § 1983.

Appeal from the United States District Court for the Southern District of Florida.

Before GOLDBERG, RONEY and TJOFLAT, Circuit Judges.

PER CURIAM.

Appellant Skipper filed suit against Brummer, Cohen, Cooperman, three public defender lawyers, under 42 U.S.C. § 1983, requesting $1,000,000 damages and alleging that appellees denied him effective assistance of counsel by allowing him to proceed to trial without counsel. The lower court held for appellees on the ground that public defenders are immune from liability under § 1983. We affirm this result, but for the reason that in this circuit the actions of court-appointed attorneys are not state action. *Slavin v. Curry*, 574 F.2d 1256, 1265 (5th Cir. 1978); *U. S. ex rel. Simmons v. Zibilich*, 542 F.2d 259, 261 (5th Cir. 1976).

AFFIRMED.

* Rule 18, 5 Cir.; *see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

Synopsis, Syllabi and Key Number Classification
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Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

EXHIBIT "C"

EXHIBIT "D"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 78-3567

U.S. COURT OF APPEALS
RECEIVED
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NEW ORLEANS, LA.

JOE EUGENE SKIPPER,

Plaintiff-Appellant,

versus

BENNETT H. BRUMMER,
DAVIS COHEN and
LENNIE COOPERMAN,

Defendants -Appellees.

U.S. COURT OF APPEALS
FILED
SEP 21 1979
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Appeal from the United States District Court for the Southern District of Florida

- - - - -

ON PETITION FOR REHEARING

(September 21, 1979)

Before GOLDBERG, RONEY and TJOFLAT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED

ENTERED FOR THE COURT:

United States Circuit Judge

EXHIBIT "E"

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to the fifth article of the original Constitution.

Amendments

First Ten amendments passed by Congress Sept. 25, 1789.

Ratified December 15, 1791.

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT II.

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT III.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

AMENDMENT VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

AMENDMENT VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

RATIFIED JANUARY 8, 1798.

AMENDMENT XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The

person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole numb - of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

RATIFIED SEPTEMBER 25, 1804.

AMENDMENT XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

RATIFIED DECEMBER 18, 1865.

AMENDMENT XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

RATIFIED JULY 28, 1868.

AMENDMENT XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

RATIFIED MARCH 30, 1870.

AMENDMENT XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

RATIFIED FEBRUARY 25, 1913.

AMENDMENT XVII.

The Senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

RATIFIED MAY 31, 1913.

AMENDMENT XVIII.

Section 1. [After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territories

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EXHIBIT "F"

EXHIBIT "F"

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA, CRIMINAL DIVISION.

CASE NO: 76-9308

THE STATE OF FLORIDA, :

Plaintiff, :

-vs- :

JOE EUGENE SKIPPER, :

Defendant. :

_____:

The above-entitled cause came on for jury trial before the Honorable Gene Williams, Judge of the above-styled Court, at the Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida, on Thursday, February 3rd, 1977, at 9:30 o'clock a.m., pursuant to Notice.

* * * * * *

APPEARANCES:

STEVE KOLLIN, ESQ.,
Assistant State Attorney
and RAY BADINI, ESQ.,
Assistant State Attorney
On behalf of the Plaintiff.

DAVIS COHEN, ESQ.,
Assistant Public Defender
and LEONARD COOPERMAN,
Certified Legal Intern
On behalf of the Defendant.

I N D E X

Witnesses	D	C
Officer Monteyo	31; 42 (Cooperman)	41 (Kollin)
	193; 207; 237; 289 (Kollin)	223 (Cooperman) 206 (Voir Dire)
Sandra Spear	245; 266 (Cooperman)	252; 266 (Kollin)
Joe Skipper	267; 291 (Cooperman)	277 (Kollin)

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Jury Selection Page 47

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Opening Statements

Mr. Kollin Page 183

Mr. Cooperman Page 238

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Exhibits

State's Exhibit 1-A for Identification Page 206

State's Exhibit One in Evidence Page 211

APPEARANCES:

STEVE KOLLIN, ESQ.,
Assistant State Attorney
On behalf of the Plaintiff.

DAVIS COHEN, ESQ.,
Assistant Public Defender
and
LEONARD COOPERMAN, Certified Legal Intern
On behalf of the Defendant.

* * * *

I N D E X

Closing Argument

Mr. Kollin Pages 324; 353

Mr. Cooperman: Page 339

Jury Instructions Page 356

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, JANE DONOVAN, Deputy Official Court Reporter, do hereby certify that I reported the foregoing jury trial before the Honorable Gene Williams, Judge of the above-mentioned Court, at the time and place hereinabove set forth; that the foregoing pages numbered from 1 through 376, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings at said jury trial.

WITNESS MY HAND this ____ day of March, 1977, at Miami, Dade County, Florida.

JANE DONOVAN,
Deputy Official Court Reporter

CERTIFICATE OF THE CLERK OF THE COURT

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, RICHARD P. BRINKER, Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, do hereby certify that the foregoing pages, numbered 1 to 293, inclusive, contain a correct transcript of the record of the judgment in the case of The State of Florida, Plaintiff, versus JOE EUGENE SKIPPER

Defendant, numbered 76-9308 [illegible], and a true and correct recital and copy of all such instruments and proceedings in said cause as appear from the records and files of my office which appear necessary to be included in the transcript of record-on-appeal in compliance with the directions furnished me.

Pages numbered 1 to 377, inclusive, embrace the transcribed notes of the Court Reporter, as made at the (trial hearing) of said cause and certified to me by her

.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the said Circuit Court of the Eleventh Judicial Circuit of Florida at Miami, Dade County, this 9th day of May A. D. 197 7.

RICHARD P. BRINKER, Clerk
of the Circuit Court of the
Eleventh Judicial Circuit of Florida,
in and for Dade County

HELEN KESSLER
By: _____
Deputy Clerk

TRUE COPY
CIRCUIT COURT SEAL

CERTIFICATE OF THE CLERK OF THE COURT

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, RICHARD P. BRINKER, Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, do hereby certify that the foregoing pages, numbered 1 to 21, inclusive, contain a correct supplemental transcript of the record of the judgment in the case of The State of Florida, Plaintiff, versus JOE EUGENE SKIPPER

Defendant, numbered 76-9308 [illegible], and a true and correct recital and copy of all such instruments and proceedings in said cause as appear from the records and files of my office which appear necessary to be included in the transcript of record-on appeal in compliance with the directions furnished me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the said Circuit Court of the Eleventh Judicial Circuit of Florida at Miami, Dade County, this 4th day of August A. D. 197 7.

RICHARD P. BRINKER
Clerk of the Circuit Court of
the Eleventh Judicial Circuit of
Florida, in and for Dade County

By: _____ Deputy Clerk

CIRCUIT COURTS
IN GOD WE TRUST
Dade County, Florida

EXHIBIT "G"

THE OPINION OF THE COURT OF APPEALS
IN ROBINSON V. BERGSTROM CAN BE FOUND
AT 579F.2d 401.

EXHIBIT "G"

EXHIBIT H

LIABILITY OF PUBLIC DEFENDERS UNDER SECTION 1983: ROBINSON V. BERGSTROM can be found at 92 Harvard Law Review 943-951.

EXHIBIT "H"

DISTRIBUTED
NOV 26 1979

SUPREME COURT OF THE UNITED STATES

RECEIVED
Nov 23
1979
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOE EUGENE SKIPPER.

Petitioner,

vs. CASE NO. 79-5499

BENNETT H. BRUMMER, et al.,

Respondent.

ORIGINAL COPY

Resp's Brief in opp.

RESPONDENTS' ANSWER BRIEF

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STATEMENT OF FACTS AND CASE

The Petitioner filed a civil rights complaint based upon his claim that he had been represented at his criminal trial by a legal intern working under the supervision of the public defender. Such representation by legal interns not yet admitted to the Florida Bar is authorized by the Florida Supreme Court, through Integration Rules of the Florida Bar, Article 18. (Appendix.)

The trial court dismissed Petitioner's complaint on the grounds that it was frivolous and failed to state a cause of action under 42 USC §1983, because public defenders are absolutely immune from suit.

The Circuit Court affirmed the lower court's finding that the complaint failed to state a legal cause of action. However, the appellate court stated the wrong standard of law had been applied to reach the correct conclusion: public defenders are not absolutely immune from suit as state judicial officers; rather, their actions are entirely outside the realm of state action.

ARGUMENT

Petitioner lacks standing to raise the issue asserted in his petition for certiorari.

Petitioner attempts to have this court grant review because of an alleged conflict between the decision of the Fifth Circuit Court of Appeals in this case and the decision of the Seventh Circuit Court of Appeals in Robinson v. Bergstrom, 579 F.2d 401 (7th Cir. 1978).

Regardless of which standard is applied in this case the result would be the same: Petitioner's complaint would properly be dismissed for failure to state a claim upon which relief could be granted. Therefore, Petitioner lacks standing to object to reasoning of the circuit court. Petitioner does not attempt to assert the application of an entirely different legal principle upon which his legal claim properly could be based. A resolution of this apparent conflict is not yet ripe, since it would have no effect on the outcome of this case.

CONCLUSION

The Court should not accept review of this case to resolve an apparent conflict between the decisions of two different circuit courts, since under either theory Plaintiff's complaint would be dismissed.

Respectfully submitted,

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A P P E N D I X

guilty of the misappropriation remains a member in good standing of The Florida Bar. All payments from said fund may be made or withheld or made in such amounts as the Board, in its discretion, may direct.

The Florida Bar or its Board of Governors may take assignments of the causes of action of claimants as a condition to said payments. Recoveries or repayments to the Board on account of payments from said fund will be restored to the fund.

2. The Board of Governors may allocate from the annual dues of the members of The Florida Bar not more than $15.00 per member per annum to a Clients' Security Fund.

3. This article shall become effective instanter and shall govern all claims now pending or hereafter filed with the Board of Governors.

Added May 18, 1966 (186 So.2d 781), amended July 1, 1970 (237 So.2d 150); May 12, 1978 (358 So.2d 1363).

Article XVIII. Law School Civil and Criminal Practice Program

I. Purpose.
II. Activities.
III. Requirements and Limitations.
IV. Certification.
V. Other Activities.
VI. Supervision.
VII. Miscellaneous.
VIII. Continuation of Practice Program After Completion of the Law School Program or Graduation.

I. Purpose

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted:

II. Activities

A. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance. In such cases the supervising attorney shall be personally present

when required by the trial judge who shall determine the extent of the eligible law student's participation in the proceeding.

B. An eligible law student may also appear in any criminal matter on behalf of the state with the written approval of the prosecuting attorney or his authorized representative and of the supervising lawyer. In such cases the supervising attorney shall be personally present when required by the trial judge who shall determine the extent of the law student's participation in the proceeding.

C. An eligible law student may also appear in any court or before any administrative tribunal in any civil matter on behalf of the state, state officers, or state agencies, with the written approval of the attorney representing the state, state officer, or state agency. The attorney representing the state, state officer, or state agency shall supervise the law student and shall be personally present when required by the court or administrative tribunal, which shall determine the extent of the law student's participation in the proceeding.

D. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

E. The Board of Governors shall fix the standards by which indigency is determined under this rule upon the recommendation of the largest voluntary bar association located in the circuit in which a program is implemented hereunder.

III. Requirements and Limitations

In order to make an appearance pursuant to this rule, the law student must:

A. Be duly enrolled in the United States in a law school approved by the American Bar Association.

B. Have completed legal studies amounting to at least four semesters, or six quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis.

C. Be certified by the dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

D. Be introduced to the court in which he is appearing by an attorney admitted to practice in that court.

E. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student (nor shall it prevent any agency from making such charges for its services as it may otherwise properly require).

F. Certify in writing that he has read and is familiar with the Code of Professional Responsibility as adopted by this court and will abide by the provisions thereof.

IV. Certification

The certification of a student by the law school dean:

A. Shall be filed with the clerk of this court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of 18 months after it is filed.

B. May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of this court. It is not necessary that the notice state the cause for withdrawal.

C. May be terminated by this court at any time without notice or hearing and without any showing of cause. Notice of the termination may be filed with the clerk of the court.

V. Other Activities

A. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the Bar of this court, but outside the personal presence of that lawyer, including:

1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

2. Preparation of briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer.

3. Except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be signed by the attorney of record.

4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.

B. An eligible law student may participate in oral argument in appellate courts, but only in the presence of the supervising lawyer.

VI. Supervision

The member of the Bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

A. Be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing.

B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

C. Assist the student in his preparation to the extent the supervising lawyer considers it necessary.

VII. Miscellaneous

Nothing contained in this rule shall affect the right of any person who is not admitted to the practice of law to do anything that he might lawfully do prior to the adoption of this rule.

VIII. Continuation of Practice Program After Completion of the Law School Program or Graduation

A. A law student who has completed the law school practice program and (1) has had certification withdrawn by the law school dean by reason of completion of the program or (2) has graduated from law school following successful completion of the program, may appear in Court pursuant to this rule if the attorney general, a state attorney, a public defender or a supervising attorney of a legal aid organization approved by the Supreme Court:

1. Files a certification in the same manner and subject to the same limitations as that required to be filed by the law school dean. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of his certification. The maximum term of certification for graduates shall be twelve (12) months from graduation.

2. Further certifies that he will assume the duties and responsibilities of the supervising attorney as provided by other provisions of this rule.

B. A legal aid organization seeking approval from the Supreme Court for the purposes of this Article shall file a petition with the clerk of the Court certifying that it is a nonprofit organization and reciting with specificity:

1. The structure of the organization and whether it accepts funds from its clients;

2. The major sources of funds used by the organization;

3. The criteria used to determine potential clients' eligibility for legal services performed by the organization;

4. The types of legal and non-legal services performed by the organization; and

5. The names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization.

Legal aid organizations approved on the effective date of this order need not reapply for approval, but all such organizations are under a continuing duty to notify the Court promptly of any significant modification to its structure or source of funds.

Added effective Dec. 4, 1970 (241 So.2d 691), amended and effective Jan. 22, 1974 (288 So.2d 222); amended April 30, 1975 (317 So.2d 65); July 11, 1975 (315 So.2d 172); amended April 7, 1976 (330 So.2d 458); amended Nov. 18, 1976 (339 So.2d 646).

Article XVIII, adopted Jan. 17, 1968 (206 So.2d 3), authorizing law students to participate in a law school sponsored trial practice program, was stricken by the Supreme Court on Dec. 4, 1970 (241 So.2d 691).

Article XIX. Group Legal Services

1. No member of The Florida Bar shall furnish or provide legal services under any arrangement with an organization which shall recommend, furnish, or pay for legal services pursuant to Disciplinary Rule 2-103(D) (5) of the Code of Professional Responsibility unless such organization shall have first applied to and secured approval of such arrangement from the Board of Governors of The Florida Bar; provided, however, that any such organization recommending, furnishing, or paying for such services as of the effective date of this article shall have six months from such date within which to apply to and secure approval of the Board of Governors for the continuance of such service.

2. Every application for approval hereunder shall affirmatively demonstrate compliance with each requirement of Disciplinary Rule 2-103(D) (5), and shall further affirmatively demonstrate compliance by each lawyer performing or to perform legal services with By-Laws of the Board of Governors of The Florida Bar and with the following conditions:

(a) Any person eligible to receive legal services under the arrangement may obtain legal services independently of the arrangement from any attorney of his choice;

(b) No unlicensed person will provide legal services under the arrangement;

(c) Neither the organization nor any member thereof shall interfere or attempt to interfere with the lawyer's independent exercise of his professional judgment;

(d) The person to whom the legal services are rendered, and not the organization, is the client of the lawyer;

(e) In providing legal services, the lawyer must comply with the Code of Professional Responsibility, including without limitation those provisions relating to the setting, charging, and collecting of fees, and relating to advertising;

(f) Any publicity disseminated by the organization to its members will not describe the lawyer beyond giving his name, address and telephone number, and such other information as may be required to facilitate the access of a member to the services of the lawyer;

(g) Any publicity disseminated by the organization to nonmembers will not identify the lawyer by name;

(h) No organization shall advertise or otherwise make representations to the public or its members regarding the cost of legal services which may be provided by attorneys serving members of the organization. The cost of legal services depends upon varying conditions and circumstances which preclude determination of the fee to be charged for a required service prior to the time the attorney is retained;

(i) The authority of the organization under this Article will be terminated in the event of any substantial violation of the provisions of the Code of Professional Responsibility or the Integration Rule or the by-laws promulgated thereunder.

(j) Any publicity that is going to be disseminated by the organization must first be approved by The Florida Bar.

3. A lawyer shall not furnish legal services in connection with any arrangement approved hereunder if he participated in

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IN THE SUPREME COURT OF THE UNITED STATES

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JOE EUGENE SKIPPER,
PETITIONER

-VS-

BENNETT H. BRUMMER, et al.,
RESPONDENTS

CASE NO. 79-5499

REPLY TO RESPONDENTS' ANSWER BRIEF

Comes now Petitioner, Joe Eugene Skipper, and files his Reply To Respondents' Answer Brief pursuant to Rules Of The Supreme Court, Rule 24(4); and shows:

1. That the Brief filed by Counsel for Respondents is clearly out of time and should not be accepted by the Court. Petitioner's Petition for Writ of Certiorari was docketed in this Court on October 12, 1979 (Exhibit "A"). The Respondents Brief has a Certificate of Service dated November 21, 1979 (See Respondents' Answer Brief, page 4). That is a total of forty (40) days. Rules Of The Supreme Court, Rule 24, states:

> "1. Counsel for the Respondent shall have thirty days (unless enlarged by the Court or a Justice thereof, or by the Clerk under the provisions of paragraph 5 of Rule 34), after receipt of a petition, within which to file forty printed copies of an opposing brief....."

Respondents have not filed for or received an enlargement of time for filing their Reply Brief.

2. That Counsel for Respondents is attempting to mislead this Court into beleiving that Petitioner has no standing to raise the issues before the Court. Even if this Court should decide that Public Defenders do have absolute immunity, the Public Defenders in this case would still be liable because they acted outside their judicial function and beyond the bounds of their authority in permitting a legal intern to represent Petitioner at trial without the knowledge and written consent of Petitioner (See Florida Bar Integeration Rule, Article 18, Appendix of Respondents' Answer Brief).

This Court has already decided that for absolute immunity to apply that the official must be within the scope of his judicial function and within his authorized authority. See Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct 984.

WHEREFORE, It is respectfully submitted that Certiorari should issue.

Respectfully submitted,

JOE EUGENE SKIPPER, pro se
P.O. Box 1100 - 761

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY TO RESPONDENTS' ANSWER BRIEF has been furnished Brian E. Nortan, Assistant Attorney General of Florida, The Capitol, Suite 1501, Tallahassee, Florida 32301, by United States Mail this 26 day of November, 1979.

Joe Eugene Skipper
JOE EUGENE SKIPPER, pro se

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 16, 1979

Mr. Joe Eugene Skipper
Box 1100-761
Avon Park, FL 33825

RE: Joe E. Skipper,
v. Bennett H. Brummer, et al.
No. 79-5499

Dear Mr. Skipper:

The petition for a writ of certiorari in the above-entitled case was docketed in this Court on October 12, 1979, as No. 79-5499.

A form is enclosed for notifying opposing counsel that the case was docketed.

Very truly yours,

MICHAEL RODAK, JR., Clerk
by Margaret McFarland

Margaret H. McFarland
Assistant

Enclosures

Exhibit "A"

IN THE SUPREME COURT OF THE UNITED STATES

JOE EUGENE SKIPPER,
PETITIONER

-VS-

BENNETT H. BRUMMER, et al.,
RESPONDENTS

CASE NO. 79-5499

NOTICE OF NEW ADDRESS

Comes now Petitioner, Joe Eugene Skipper, and files this his Notice of New Address.

Petitioner would inform the Court that he will be released from prison on December 3, 1979, and requests that all further legal correspondence be sent to:

Joe Eugene Skipper
3041 S.W. 67 Avenue
Miami, Florida 33155

Respectfully submitted,

JOE EUGENE SKIPPER, pro se
P.O. BOX 1100 - 761
AVON PARK, FLORIDA 33825

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF NEW ADDRESS has been furnished Brian E. Nortan, Assistant Attorney General of Florida, The Capitol, Suite 1501, Tallahassee, Florida 32301, Counsel for Respondents, by United States Mail this 26 day of November, 1979.

JOE EUGENE SKIPPER, pro se